No. 85-971
No. 85-972

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

ROBERT L. CLARKE,
COMPTROLLER OF THE CURRENCY,

Petitioner,

v.

SECURITIES INDUSTRY ASSOCIATION,

Respondent.

SECURITY PACIFIC NATIONAL BANK,

Petitioner,

v.

SECURITIES INDUSTRY ASSOCIATION,

Respondent.

ON WRITS OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF OF THE NEW YORK CLEARING HOUSE ASSOCIATION AS AMICUS CURIAE

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INTEREST OF AMICUS CURIAE

The New York Clearing House Association (the "Clearing House") is an association of 12 leading commercial banks that

are located in New York City.[1] It operates electronic payment systems and clears commercial drafts and items in the New York area. In addition, it files briefs as amicus curiae in appeals that raise significant questions of banking law. The Clearing House filed briefs as amicus curiae in support of the petitions for writs of certiorari before this Court, 106 S. Ct. 1259 (1986), and in support of petitioners-defendants in the Court of Appeals for the District of Columbia Circuit, 758 F.2d 739 (D.C. Cir. 1985), Pet. App. 1a-3a[2] and the District Court for the District of Columbia, 577 F. Supp. 252 (D.D.C. 1983), Pet. App. 10a-29a.

Members of the Clearing House have a direct and vital interest in the proper interpretation of Federal banking statutes such as the McFadden Act. The Clearing House believes that petitioner Comptroller of the Currency (the "Comptroller") properly exercised his authority under the Act in permitting petitioner Security Pacific National Bank to establish, and Union Planters National Bank to acquire, subsidiaries providing discount brokerage services to the public at sites other than existing bank branches. The Clearing House further believes that the views presented in this brief will aid the Court in its consideration of the issues arising under the McFadden Act.

INTRODUCTION AND SUMMARY OF ARGUMENT

The court of appeals summarily affirmed a decision of the district court holding that banks may engage in discount securities brokerage, as the Comptroller had previously ruled,

[1] The members of the Clearing House are The Bank of New York, The Chase Manhattan Bank, N.A., Citibank, N.A., Chemical Bank, Morgan Guaranty Trust Company of New York, Manufacturers Hanover Trust Company, Irving Trust Company, Bankers Trust Company, Marine Midland Bank, N.A., United States Trust Company of New York, National Westminster Bank USA and European American Bank.

[2] Citations to the record are to the Appendix to the Petition for Writ of Certiorari filed by the Comptroller of the Currency ("Pet. App.").

but that, contrary to the Comptroller's view, banks may conduct that business only at bank headquarters and "branches" within the meaning of § 7(f) of the McFadden Act, 12 U.S.C. § 36(f). The courts below also held that the Securities Industry Association ("SIA") had standing to challenge the Comptroller's ruling because its membership stood to lose profits if banks were to engage in discount brokerage without the locational fetters that SIA espouses and the courts below sustained. This Court denied SIA's petition for a writ of certiorari challenging the holding below that the Glass-Steagall Act permits banks to engage in discount brokerage, 106 S. Ct. 790 (1986). Hence, the only questions presented are where a bank may carry on that business, and whether SIA has standing to raise the issue.

For many decades national banks have engaged in two different types of activities: those activities that may be conducted only at bank headquarters or branches, and those that may be conducted at any location. Activities in the former category, as specified in § 7(f) of the McFadden Act, are taking deposits, paying checks and lending money. Activities in the latter category include a wide array of legitimate and useful activities that national banks have long conducted without locational constraint including, *inter alia*, trust account administration, credit card processing operations, equipment leasing, and loan production. The applicability of the constraints established by the McFadden Act to the former category but not the latter has long been relied on by banks, implemented by the Comptroller of the Currency,[3] and acknowledged by Congress (pp. 11-12 *infra*).

The branching provisions of the McFadden Act were intended to remedy certain competitive inequalities between state-chartered and nationally-chartered banks and have no bearing on competition between banks and others in the provision of securities brokerage services. *First Nat'l Bank of Logan v. Walker Bank & Trust Co.*, 385 U.S. 252, 261 (1966). The Act cannot legitimately be invoked to shelter the securities industry from competition or to preclude commercial banks from participating effectively in the brokerage business.

[3] *See, e.g.*, 12 C.F.R. §§ 5.30(a), 7.7380(b) (1985).

The Comptroller, in a carefully considered opinion, found that discount brokerage offices owned by a national bank are not bank branches, since *none* of the three functions identifying a bank office as a branch—taking deposits, paying checks, or lending money—is involved in the operation of a discount brokerage service. Therefore, the Comptroller found, such offices may be maintained anywhere, and are not subject to locational restraint. *Security Pacific National Bank*, [1982-83 Transfer Binder] Fed. Banking L. Rep. ¶ 99,284 (CCH) (Comptroller of Currency 1982); Pet. App. 30a-46a. The Comptroller first determined that the Glass-Steagall Act permits "securities purchases and sales for customers in which the bank acts in the capacity of agent", *id.* at 86,256, Pet. App. 31a-39a, and "constitutes clear authorization for banks and, hence, their operating subsidiaries . . . to engage in the [discount brokerage] activities contemplated", *id.* The Comptroller then ruled that discount brokerage offices operated by a bank would not be bank "branches", as they would not perform any of the activities specified in § 7(f) of the McFadden Act, lending money, receiving deposits, or paying checks. *Id.* at 86,259-60, Pet. App. 39a-43a.

The district court affirmed the ruling of the Comptroller as to the Glass-Steagall issues but reversed the Comptroller's ruling that discount brokerage offices were not bank "branches". The district court held that the term "branch" should be read very broadly to encompass any location at which a bank conducts any activity "aimed at attracting and servicing customers conveniently", 577 F. Supp. 252, 260 (D.D.C. 1983), Pet. App. 28a. The court of appeals affirmed the ruling of the district court, by a 2-1 vote, in a two-sentence opinion, stating that it was in agreement with the result reached "generally for the reasons stated" by the district court. 758 F.2d 739, 740 (D.C. Cir. 1985), Pet. App. 2a. Suggestions for rehearing en banc were denied, with three judges dissenting. 765 F.2d 1196 (D.C. Cir. 1985), Pet. App. 4a-9a.

We show below that the decision of the court of appeals should be reversed and the Comptroller's ruling should be

sustained on the basis of the controlling language of § 7(f) of the McFadden Act (pp. 5-9 *infra*). Further, we show that the Comptroller's ruling is supported by the legislative history of the McFadden Act and by explicit Congressional acknowledgement of the conduct of activities by banks at non-branch offices (pp. 9-12 *infra*). Finally, we show that in reaching their erroneous conclusion, the courts below disregarded the principle that statutory restrictions on competition are not to be inferred absent explicit congressional command (pp. 13-16 *infra*), and that SIA lacks standing to assert this claim (p. 16 *infra*).

ARGUMENT

THE BRANCHING PROVISIONS OF THE MCFADDEN ACT DO NOT CONSTRAIN A NATIONAL BANK'S BROKERAGE ACTIVITIES.

The courts below erred in setting aside the Comptroller's holding that a discount brokerage office operated by a national bank is not a "branch" within the meaning of § 7(f) of the McFadden Act. In particular, the district court's conclusion that any location at which any activities "aimed at attracting and servicing customers conveniently" is a "branch" within the meaning of the Act, 577 F. Supp. at 260, Pet. App. 28a, is a departure from the statutory text unwarranted by legislative history, judicial construction and commercial practice, and inconsistent with the national policy favoring competition.

A. *The Plain Language and Legislative History of the McFadden Act Show That Discount Brokerage Offices Are Not "Branch Banks".*

The McFadden Act was enacted in 1927 to grant national banks the same freedom to establish branch banks as is enjoyed by the state-chartered banks with which they compete. *First Nat'l Bank of Logan v. Walker Bank & Trust Co.*, 385 U.S. 252, 261 (1966). To that end, it provides that a national bank may establish bank branches in the state in which it is located to the extent that "such establishment and operations are at the time authorized to State banks by the statute law of the State in

question", 12 U.S.C. § 36(c)(2). It then defines "branch" in terms of the three basic and traditional services which banks provide:

> "The term 'branch' as used in this section shall be held to include any branch bank, branch office, branch agency, additional office, or any branch place of business located in any State or Territory of the United States or in the District of Columbia *at which deposits are received, or checks paid, or money lent.*" 12 U.S.C. § 36(f) (emphasis supplied).

This Court has previously addressed the question of whether a particular activity at a given location constitutes a "branch" within the meaning of the McFadden Act. In *First Nat'l Bank in Plant City v. Dickinson*, 396 U.S. 122 (1969), the Court determined that a mobile teller's window, operating out of an armored car, was a branch within the statutory definition notwithstanding an attempt by the bank to define the "deposit" as occurring only at the bank's authorized office. In reaching that conclusion, the Court rejected the argument that the parties to the banking transaction could deem the deposit to occur elsewhere than at the mobile teller, and concluded, first, that the bank had gained a competitive advantage over state-chartered banks and second, that:

> "*the conduct of the parties and the nature of their relations bring First National's challenged activities within the federal definition of branch banking.* Here, penetrating the form of the contracts to the underlying substance of the transaction, we are satisfied that at the time a customer delivers a sum of money either to the armored truck or the stationary receptacle, the bank has, for all purposes contemplated by Congress in § 36(f), received a deposit." *Id.* at 137 (emphasis supplied).

Inquiry into "the conduct of the parties and the nature of their relations" discloses that the transactions at issue here are purchases and sales of securities and not transactions by which "deposits are received, or checks paid, or money lent." This is, thus, not a case in which the proscribed substance is camouflaged in permitted form. Neither form nor substance bear any resemblance to the enumerated activities.

If, as the district court supposed, the definition set forth in § 7(f) were so broadly inclusive as to embrace any activity by a bank or bank subsidiary "aimed at attracting and servicing customers conveniently", 577 F. Supp. at 260, Pet. App. 28a, there would have been no need for this Court to analyze "the conduct of the parties and the nature of their relations"; obviously the mobile teller's window in *Dickinson* was intended precisely to attract and service customers conveniently. Analysis was warranted to establish the nature of the services and to determine—over the contrary argument by the bank—that they included one or more of the three activities specified in § 7(f).[4]

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[4] The holding of *St. Louis County Nat'l Bank v. Mercantile Trust Co.*, 548 F.2d 716, 719 (8th Cir. 1976), *cert. denied*, 433 U.S. 909 (1977) (relied on below, 577 F. Supp. at 260, Pet. App. 27a), that "the three routine banking functions delineated in section 36(f) are not the only indicia of branch banking", was unprecedented and has not heretofore been followed. All other cases decided by the lower courts—including the cases cited by SIA (Cert. Opp. 4 n.6)—follow this Court's analysis in *Dickinson*. *E.g.*, *Colorado ex rel. State Banking Board v. First Nat'l Bank of Fort Collins*, 540 F.2d 497, 499 (10th Cir. 1976), *cert. denied*, 429 U.S. 1091 (1977) (determination that "the withdrawal of pre-packaged packets of money, with a corresponding debit to the customer's checking or savings account . . . did not constitute 'checks paid' . . . unduly emphasizes form at the expense of substance and fails to follow the admonition of the Supreme Court in *Dickinson*"); *Illinois ex rel. Lignoul v. Continental Illinois Nat'l Bank & Trust Co.*, 536 F.2d 176, 178 (7th Cir.), *cert. denied*, 429 U.S. 871 (1976) ("any order to pay which is properly executed by a customer, whether it be check, card or electronic device, must be recognized as a routine banking function"); *Independent Bankers Ass'n of America v. Smith*, 534 F.2d 921, 930, 938-48 (D.C. Cir.), *cert. denied*, 429 U.S. 862 (1976) ("the substantive issue in this case is whether all [automatic tellers] exhibit at least one of these indicia of branchness"); *accord, e.g., Independent Bankers Ass'n of America v. Marine Midland Bank, N.A.*, 757 F.2d 453, 462 (2d Cir. 1985); *Independent Bankers Ass'n of America v. Heimann*, 627 F.2d 486, 488 (D.C. Cir. 1980); *Utah ex rel. Dep't of Financial Institutions v. Zions First Nat'l Bank*, 615 F.2d 903, 905-06 (10th Cir. 1980); *State Bank of Fargo v. Merchants Nat'l Bank & Trust Co.*, 593 F.2d 341, 343 (8th Cir. 1979); *Dakota Nat'l Bank & Trust Co. v. First Nat'l Bank & Trust Co.*, 554 F.2d 345, 351-53 (8th Cir.), *cert. denied*, 434 U.S. 877 (1977); *Missouri ex rel. Kostman v. First Nat'l Bank in St.*

The district court used *Dickinson*'s passing reference to the indefiniteness of the statutory language as a warrant for draining § 7(f) of all defining character. While it is surely true that the statutory language, which uses the word "branch" in defining the term "branch", has a "circular aspect" and hence "may not be a model of precision", 396 U.S. at 135, it is, nonetheless, not devoid of meaning. Moreover, the respects in which it is imprecise are no more relevant here than they were in *Dickinson*. The "indefiniteness" in the statute does not concern the three enumerated activities, but rather the various places which will constitute branches if the enumerated activities are performed there:

> "The term 'include' in the statute does not relate to the activities involved but refers to the places at which the specified activities of receiving deposits, paying checks and lending money are carried out." *Continental Illinois Nat'l Bank & Trust Co. v. Lignoul*, No. 76-C-2209, slip op. at 17-18 (N.D. Ill. Nov. 9, 1976).

Similarly, this Court's holding in *Dickinson* that an armored car is a "branch" if deposits are accepted there demonstrates that the statute brings within its scope places not specifically enumerated (*i.e.*, places other than branch banks, branch offices, branch agencies, additional offices or branch places of business) if deposits are received, checks are paid, or money is lent there. Likewise shopping centers, *Colorado ex rel. State Banking Board v. First Nat'l Bank of Fort Collins*, *supra*, railroad stations, *Illinois ex rel. Lignoul v. Continental Illinois Nat'l Bank & Trust Co.*, 409 F. Supp. 1167 (N.D. Ill. 1975), *aff'd*, 536 F.2d 176 (7th Cir.), *cert. denied*, 429 U.S. 871 (1976), and factories, *Missouri ex rel. Kostman v. First Nat'l Bank in St. Louis*, 405 F. Supp. 733 (E.D. Mo. 1975), *aff'd*, 538 F.2d 219 (8th Cir.), *cert. denied*, 429 U.S. 941 (1976), can all be bank branches, notwithstanding the fact that these places are not enumerated in the statute, because at least one of the three specified activities is in substance performed there.

Louis, 538 F.2d 219, 220 (8th Cir.), *cert. denied*, 429 U.S. 941 (1976); *Nebraskans for Independent Banking, Inc. v. Omaha Nat'l Bank*, 530 F.2d 755, 759 (8th Cir.), *vacated on other grounds*, 426 U.S. 310 (1976); *Independent Bankers Ass'n of Georgia v. Board of Governors of the Federal Reserve System*, 516 F.2d 1206, 1222 n.68 (D.C. Cir. 1975); *Jackson v. First Nat'l Bank of Gainesville*, 430 F.2d 1200, 1201-02 (5th Cir. 1970), *cert. denied*, 401 U.S. 947 (1971); *Cheshire Nat'l Bank v. Smith*, 427 F. Supp. 277, 281-82 (D.N.H. 1977); *Oklahoma ex rel. State Banking Board v. Bank of Oklahoma*, 409 F. Supp. 71, 90-92 (N.D. Okla. 1975).

Thus, the statutory text and its consistent construction indicate that, in defining a branch bank, Congress intended to reach those places—and only those places—at which at least one of these three basic banking functions are carried out. Likewise, the Act's legislative history and historical context confirm that natural and straightforward reading of the statutory language. At the time the McFadden Act was being considered by Congress, a "branch bank" was understood to be a place where banking business was "conducted as if it were a separate organization, . . . compet[ing] in all branches of the banking business with other banks in that locality the same as if it were an independent institution". 29 Op. Att'y Gen. 81, 88 (1911); *see* 34 Op. Att'y Gen. 1, 3-5 (1923). As the Solicitor General told this Court in 1924:

> "In so far as [the] practical operations [of a branch] are concerned, it is a *complete substitute* for a local bank in the locality which it serves. It engages in a *general banking business* in conjunction with and in subordination to, the parent bank." Brief of the United States in *First Nat'l Bank in St. Louis v. Missouri*, 263 U.S. 640 (1924), *reproduced in part in* C. Collins, *The Branch Banking Question*, 65-66 (1926) (emphasis supplied).

Plainly, a discount brokerage office, which does not receive deposits, pay checks or lend money could not be "a complete substitute for a local bank", would not be perceived to be a bank, and therefore would not be deemed to be a "branch".

The McFadden Act was written against a background of locational constraints that grew out of a concern over the concentration and centralization of credit and a desire to protect

local banks from competitive pressures. *See, e.g.*, C. Collins, *The Branch Banking Question* 8 (1926); Vester, *Trends and Developments in State Regulation of Banks,* 90 Banking L.J. 464, 466 (1973). Whatever the merits of those concerns, they relate only to the traditional banking functions of making loans, receiving deposits and paying checks. A brokerage business in nationally traded securities, conducted solely on an agency basis, has nothing to do with control over credit facilities and, while competing with other firms engaged in securities brokerage, does not compete with local banks insofar as they are engaged in the traditional banking functions.

Furthermore, it is not every business conducted by a national bank that is subject to locational constraints. Congress has authorized national banks to engage in activities beyond those enumerated in § 7(f).[5] The legislative history of the branching provisions of the National Bank Act which preceded the McFadden Act, 12 U.S.C. § 81, makes it clear that the "general business" subject to locational constraint is coextensive with the enumerated activities in § 7(f), *i.e.*, paying checks, accepting deposits and making loans. Contemporaneous evidence of this understanding is found in the Attorney General's 1923 opinion on the scope of R.S. § 5190 (*codified at* 12 U.S.C. § 81), prior to its amendment by the McFadden Act. The statute then read:

> "The usual business of such national banking associations shall be transacted at an office or banking house located in the place specified in its organization certificate."

The Attorney General stated:

> "It is to be observed that section 5190, R.S., relates to the 'usual business' which, in my opinion, is to be construed [as] the general banking business usually conducted by national banks. There is no statutory requirement that all the business of a national bank shall be transacted at the general office or banking house of the association.
>
> ". . . [The association] may not, however, establish a branch bank to do a general banking business such as is usually done by national banks." 34 Op. Att'y Gen. 1, 3-4 (1923).

[5] *See, e.g., Securities Industry Ass'n v. Comptroller of the Currency*, 758 F.2d 739 (D.C. Cir. 1985), Pet. App. 1a-3a, *cert. denied*, 106 S. Ct. 790 (1986); *Securities Industry Ass'n v. Board of Governors of the Federal Reserve System*, 468 U.S. 207 (1984).

Section 8 of the McFadden Act amended 12 U.S.C. § 81, substituting "general business" for "usual business" and permitting such business to be conducted not only at bank headquarters but also at branches as specified in § 7 of the Act.[6] We are not aware of any legislative history that would contradict the Attorney General's view that "general business" was synonymous with "usual business" and that "general business" did not embrace "all the business of a national bank". It should also be noted that to read the McFadden Act as subjecting the entire business of a national bank to locational constraints renders the specific enumeration of activities in § 7(f) meaningless surplusage. Indeed, had Congress intended to limit all activities, it would scarcely have needed to define "branch" at all.

The division of bank activities between those subject to locational limit and those not so limited has been recognized by Congress. In debating the International Banking Act of 1978, Congress took account of the fact that banks were engaged in substantial multistate activities that were not constrained by the McFadden Act.[7] In three years of hearings on the proposed act, Congress recognized that the McFadden Act imposed locational constraints on national banks, but not on foreign banks, in taking deposits, paying checks, and making loans,[8]

[6] 12 U.S.C. § 81 now provides:

> "The general business of each national banking association shall be transacted in the place specified in its organization certificate and in the branch or branches, if any, established or maintained by it in accordance with the provisions of section 36 of this title."

[7] Pub. L. No. 369, 92 Stat. 607 (1978).

[8] S. Rep. No. 1073, 95th Cong., 2d Sess. 8 (1978).

but found justification for accommodating multistate foreign bank activities in the fact that national banks were not so constrained in the conduct of other aspects of their business.[9] This Court has frequently recognized that such congressional assessments of the impact of earlier statutes "are entitled to significant weight."[10]

In reaching its overly broad reading of the statute, the district court rejected what it disparagingly characterized as the Comptroller's "literal" reading of the statute, preferring to rely on one opaque piece of post-enactment legislative history. 577 F. Supp. at 259, Pet. App. 25a-26a. This Court has recently cautioned, however, in a related context, that the banking statutes are to be read in accordance with their terms and that

[9] *See, e.g., Financial Institutions and the Nation's Economy: (FINE) Discussion Principles: Hearings Before the Subcommittee on Financial Institutions Supervision, Regulation and Insurance of the House Banking, Currency and Housing Committee*, Part 1, 94th Cong., 1st Sess. & 2d Sess. 1245-1249 (1975); *id.*, Part 3 at 1834 (1976); *Foreign Bank Act of 1975: Hearing Before the Subcommittee on Financial Institutions of the Senate Committee on Banking, Housing and Urban Affairs*, 94th Cong., 2d Sess. 154-56, 234, 370-72, 433, 509-10 (1976); *International Banking Act of 1976: Hearings Before the Subcommittee on Financial Institutions of the Senate Committee on Banking, Housing and Urban Affairs*, 94th Cong., 2d Sess. 162-64, 169-70, 258-59 (1976); *International Banking Act of 1977: Hearings Before the Subcommittee on Financial Institutions Supervision, Regulation and Insurance of the House Committee on Banking, Finance and Urban Affairs*, 95th Cong., 1st Sess. 301, 311-33, 473-74, 556, 576, 607-08 (1977); *International Banking Act of 1978: Hearings Before the Subcommittee on Financial Institutions of the Senate Committee on Banking, Housing and Urban Affairs*, 95th Cong., 2d Sess. 99, 144, 198-200 (1978); *International Banking Act of 1978: Report of the Senate Committee on Banking, Housing, and Urban Affairs*, 95th Cong., 2d Sess. 8-11 (1978).

[10] *Seatrain Shipbuilding Corp. v. Shell Oil Co.*, 444 U.S. 572, 596 (1980); *accord, e.g., Bell v. New Jersey*, 461 U.S. 773, 784-85 (1983); *Board of Governors of the Federal Reserve System v. Investment Company Institute*, 450 U.S. 46, 61-77 (1981); *Andrus v. Shell Oil Co.*, 446 U.S. 657, 666 n.8 (1980); *Chrysler Corp. v. Brown*, 441 U.S. 281, 300 (1979); *Glidden Co. v. Zdanok*, 370 U.S. 530, 541 (1962).

policy decisions to alter those terms should be left to Congress. *Board of Governors of the Federal Reserve System v. Dimension Financial Corp.*, 106 S. Ct. 681, 689 (1986). As this Court observed, matter extrinsic to the legislative debate, even when made a part of the formal record before Congress, "is not 'legislative history' in any meaningful sense of the term and cannot defeat the plain application of the words actually chosen by Congress to effectuate its will." *Id.* at 688.

Adopting the district court's sweeping definition of "branch" could have severe consequences for activities in which national banks have long engaged and would inevitably create confusion and uncertainty. If "branch" were defined to embrace any operation conducted by a national bank at its main office, it could bring within the definition of "branch" many activities now commonly conducted elsewhere, *e.g.*, loan production, trust account administration (which necessarily involves the purchase and sale of securities[11]), processing of installment loans, equipment leasing and credit card processing operations. This would throw into question the legal viability of hundreds of national bank offices which have not heretofore been considered branches. The district court's formulation, which would restrict all activities "aimed at attracting and servicing customers conveniently", substitutes for Congress's objective test an unjustifiably and unworkably vague rule which invites litigation. This Court should not accept the lower courts' invitation to scuttle the three-fold test that Congress has selected and the Comptroller and the courts have enforced for six decades.

B. *The Courts Below Ignored the Principle That Statutory Restrictions on Competition Are Not To Be Inferred Absent Explicit Congressional Command.*

While affirming the right of national banks to engage in the business of securities brokerage, the courts below adopted

[11] *See Investment Company Institute v. Clarke*, [1985-86 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 92,463 (D. Conn. 1986), *aff'd*, No. 86-6033 (2d Cir. May 2, 1986).

an interpretation of the McFadden Act that has the inevitable and intended effect of significantly hampering bank brokerage operations in competing with non-bank securities brokerage firms. The anticompetitive effect of the decision was at least implicitly recognized by the district court. It found:

> "SIA has alleged that *its members' profits will suffer* if national banks are allowed to operate brokerage subsidiaries in competition with them. And it is obvious that the greater number of offices from which banks are allowed to conduct their brokerage business, *the greater will be the inroads the banks will be able to make* into the business of SIA's members." 577 F. Supp. at 258, Pet. App. 23a (emphasis supplied).

Inroads can be made into "the business of SIA's members" only by attracting customers with competitive prices and services. But the salutary function of competition in our economy is precisely that it affords choices to customers and thereby constrains profits by driving down prices and threatening the erosion of market shares.

In adopting an interpretation of § 7(f) of the McFadden Act that subjects competition to the handicap of locational constraints, the courts below utterly disregarded the fundamental national policy in favor of vigorous and unhampered competition. As Congress long ago established, preserving the rule of competition is the declared public policy of the United States. 15 U.S.C. §§ 1-7. This Court has stated:

> "The Sherman Act was designed to be a comprehensive charter of economic liberty aimed at preserving free and unfettered competition as the rule of trade. It rests on the premise that the unrestrained interaction of competitive forces will yield the best allocation of our economic resources, the lowest prices, the highest quality and the greatest material progress, while at the same time providing an environment conducive to the preservation of our democratic political and social institutions. But even were that premise laid open to question, the policy

> unequivocally laid down by the Act is competition." *Northern Pacific Railway Co. v. United States,* 356 U.S. 1, 4 (1958).

Clear recognition of that policy has given rise to rules of statutory construction and interpretation that were entirely ignored by the courts below. As this Court has held, statutory exceptions to the rule of competition must be both explicit and narrowly construed. *See United States v. National Ass'n of Securities Dealers, Inc.,* 422 U.S. 694, 719-20 (1975); *Carnation Co. v. Pacific Westbound Conference,* 383 U.S. 213, 218 (1966); *United States v. Philadelphia Nat'l Bank,* 374 U.S. 321, 350-51 & n.28 (1963).[12]

The courts below wholly disregarded this doctrine, finding in the McFadden Act competitive constraints neither expressed nor intended by Congress. Even if the relevant statutory language were more ambiguous than we believe it to be, it obviously does not manifest the requisite explicit intention to restrain competition of the type involved here. As we have shown above, nothing in the language of the Act suggests that locational restraints apply to offices, agencies or any other types of facility at which none of the three specifically designated types of transactions occurs. Since discount brokerage offices perform none of the enumerated functions, nor engage in activities even arguably akin to those functions, only an imaginative and unwarranted stretch of the statutory language can embrace them. Whether or not such an elastic approach to statutory construction would be appropriate in any circumstances, it is clearly impermissible when it collides with the explicit Congressional policy in favor of unhampered competition.

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[12] We fully recognize, as this Court stated with respect to the Glass-Steagall Act in *Investment Company Institute v. Camp,* 401 U.S. 617 (1971), that Congress has elected to sacrifice to other purposes competition in some areas. 401 U.S. at 630, 635-36. But exceptions to the rule of competition are not to read more broadly than required by the express language Congress adopted. *See Federal Maritime Comm'n v. Seatrain Lines, Inc.,* 411 U.S. 726, 733 (1973); *Otter Tail Power Co. v. United States,* 410 U.S. 366, 374 (1973).

The purpose of the McFadden Act was to facilitate competition among state and national banks and not to restrain competition between banks and brokerage firms. The Act sought to redress a competitive inequality by granting national banks the same branching privileges afforded to state banks by state law. *First Nat'l Bank of Logan v. Walker Bank & Trust Co.*, 385 U.S. 252, 261 (1966); *First Nat'l Bank in Plant City v. Dickinson*, 396 U.S. 122 (1969); *see* R. Westerfield, *Banking Principles and Practice*, 249-51 (rev. ed. 1928). Nothing in the Act suggests a purpose to provide non-bank brokerage firms with shelter from competition.

These considerations also evidence the soundness of the dissenting opinion on denial of rehearing en banc, 765 F.2d at 1197, Pet. App. 6a-9a, that SIA is not within the zone of interests protected by—and hence does not have standing under—the McFadden Act. While we do not doubt that SIA's members may in some sense be injured by more intense competition, such injury without more is insufficient to establish standing to sue. *Association of Data Processing Service Organizations, Inc. v. Camp*, 397 U.S. 150, 153 (1970); *Simon v. Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26, 39 n.19 (1976). By abandoning the zone of interest requirement, the decision below threatens to engulf the regulatory scheme established by the McFadden Act and implemented by the Comptroller in endless litigation at the behest of innumerable litigants seeking to fetter actual or potential competition from banks and bank subsidiaries.

The restriction of such competition as banks may provide in the area of discount brokerage services should not be countenanced absent express Congressional proscription. The branching provisions of the McFadden Act clearly do not contain such a proscription, and the language of the Act should not be strained to provide one.

CONCLUSION

The indeterminate redefinition of "branch" adopted by the courts below is inconsistent with the plain meaning and the legislative history of the McFadden Act and cannot be justified by either a post-enactment statement of Representative McFadden or the decisions cited by the courts below. For the reasons stated above, the decision of the court of appeals, insofar as it holds that discount brokerage offices are bank branches, should be reversed.

Respectfully submitted,

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